



July 15, 1996

**THIS LETTER WAS SENT TO THE U.S. AIR CARRIERS LISTED AT THE END OF THE LETTER.**

«name»  
«title»  
«company»  
«address»  
«moreaddress»  
«city», «state» «zip»

Dear «salutation»

We are sending you and other airlines this letter to advise you of several of the more problematic practices we have noted in reviewing certain air carrier operations and their contracts of carriage and international tariff submissions and to seek your help in eliminating them. It is our view that these kinds of practices violate 49 U.S.C. 41712, which prohibits unfair and deceptive practices and unfair methods of competition in the airline industry. This is to advise you that we will pursue enforcement action in the future if we determine that these kinds of practices continue to exist. Later this year after completing several additional carrier operational reviews, our Aviation Consumer Protection Division will be providing your airline with information on any other practices it finds that require correction and may exist with other carriers.

Our first area of concern involves choice-of-forum provisions in contracts of carriage and tariffs. Those provisions purport to designate the court or jurisdiction where any lawsuit against the carrier concerning the purchased air transportation must be brought. We have noted choice-of-forum provisions that purport to limit a passenger's right to sue to the courts of the one county, city, or state where the airline is headquartered. We view such provisions to be unlawful under 49 U.S.C. 41712 and, with respect to international transportation, they may also be unlawful under the Warsaw Convention. It is our view that for air transportation sold in the U.S., a passenger must be able to seek legal redress in any court of competent jurisdiction. Trying to force passengers to file what are generally small claims in courts that may be thousands of miles from their homes effectively deprives them unfairly of legal recourse. Such provisions are unconscionable and we will take immediate enforcement action to preclude their use.<sup>[1]</sup>

The second problem we wish to bring to your attention concerns passengers holding nonrefundable tickets or tickets that require the payment of a penalty for a change of flight time or travel date. It is our understanding that at least one carrier has been applying its nonrefundability/penalty provisions in situations in which the change of flight time or travel date has been necessitated by carrier action or "an act of god", e.g., where the carrier cancels a flight for weather or mechanical reasons. Imposing monetary penalties on passengers in these kinds of situations is grossly unfair and it violates 49 U.S.C. 41712, as would any contract of carriage or tariff provision mandating such a result. We will aggressively pursue any cases of this type that come to our attention.

We would appreciate your disseminating the information in this letter to appropriate officials in your company. In addition we would ask that they conduct a review of your company's contract of carriage, tariffs, and internal procedures to ensure that the troublesome practices noted above do not exist in your operations. If you have any questions, please call Hoyte Decker, Director of our Aviation Consumer Protection Division, at (202) 366-5957 or Dayton Lehman, my deputy, at (202) 366-9349.

Sincerely,

/s/

Samuel Podberesky

Assistant General Counsel for

## Aviation Enforcement and Proceedings

name	title	company	address	moreaddress	city	state	zip	salutatio
Mr. Geoffrey T. Crowley	President & CEO	Air Wisconsin Airlines Corp.	W6390 Challenger Dr., Suite 203		Appleton	WI	54915	Mr. Crowley
Mr. Robert Swenson	President	AirTran Airways, Inc.	6280 Hazeltine National Dr.	Suite 100	Orlando	FL	32822	Mr. Swenson
Mr. Izad Djahanshahi	President	Airways International	P.O. Box 1244		Miami Springs	FL	33266-1244	Mr. Djahansh
Mr. Steven G. Hamilton	V P-Legal and General Counsel	Alaska Airlines, Inc.		P.O. Box 68900	Seattle	WA	98168	Mr. Hamilton
Mr. Glenn R. Zander	President & CEO	Aloha Airlines, Inc.	PO Box 30028		Honolulu	HI	96820	Mr. Zand
Mr. Martin J. Whalen	Sr Vice President and General Counsel	America West Airlines, Inc.	4000 East Sky Harbor Blvd.		Phoenix	AZ	85034	Mr. Whal
Ms. Anne H. McNamara	Sr V P-Administration & General Counsel	American Airlines, Inc.	Mail Drop 5618	Post Office Box 619616	DFW Airport	TX	75261-9616	Ms. McNama
Mr. J. George Mikelsons	Chairman & CEO	American Trans Air, Inc.	7337 W. Washington St.		Indianapolis	IN	46231	Mr. Mikelson
Mr. Jonathan Batchelor	President	Arrow Air, Inc.	Box 026062	Miami International Airport	Miami	FL	33103	Mr. Batchelor
Ms. Cheryl Grue	President	AV Atlantic	1170 Lee Wagener Blvd., Suite 201		Ft. Lauderdale	FL	33315	Ms. Grue
Mr. John Catsimatidis	President	Capitol Air Express, Inc.	823 Eleventh Ave.		New York	NY	10019	Mr. Catsimati
Mr. Daniel Ratti	President	Carnival Air Lines, Inc.	1815 Griffin Road, Suite 205		Dania	FL	33004	Mr. Ratti
Mr. Tod McClaskey	President	Casino Express Airlines	JC Harris Field	803 Murray Way	Elko	NV	89801	Mr. McClaske
Mr. Jeffery Smisek	Vice President and General Counsel	Continental Airlines	2929 Allen Parkway, Suite 2010		Houston	TX	77019	Mr. Smise
Mr. Robert S. Harkey	Sr V P, General Counsel, and Secretary	Delta Airlines, Inc.		Hartsfield Atlanta International Airport	Atlanta	GA	30320	Mr. Hark

Mr. Donald Rhoads	General Manager	Eagle Airlines	175 East Reno Ave., Suite C9		Las Vegas	NV	89119	Mr. Rhoa
Mr. Steven Davis	VP-Operations, Inc.	Eastwind Airlines	Trenton-Mercer Airport	Building 1 Scotch Rd.	W. Trenton	NJ	08628	Mr. Davis
Mr. Mel Spelde	President	Empire Airlines, Inc.	11101 Airport Drive		Hayden Lake	ID	83835	Mr. Speld
Mr. Larry K. Lane	President	Evergreen International Airlines, Inc.	3850 Three Mile Lane		McMinnville	OR	97128	Mr. Lane
Mr. James Wikert	Chief Executive Officer	Express One International, Inc.	3890 West NW Highway, #700		Dallas	TX	75220	Mr. Wike
Mr. Sam Addoms	President & CFO	Frontier Airlines, Inc.	12015 East 46th Ave.		Denver	CO	80239	Mr. Addoms
Mr. Robert Stephan	President	Great American Airways	Box 10165 Reno-Cannon Int'l Airport		Reno	NV	89510	Mr. Steph
Mr. Bruce Nobles	Chairman & CEO	Hawaiian Airlines, Inc.	PO Box 30008		Honolulu	HI	96820	Mr. Nobl
Ms. John Kelly	Chairman, President & CEO	Horizon Air	PO Box 48309		Seattle	WA	98148	Mr. Kelly
Mr. David Clark	President	International Charter Xpress	3800 Rodney Parham Rd.		Little Rock	AR	72212	Mr. Clark
Mr. Jerry Murphy	President & CEO	KIWI International Airlines	Hemisphere Center	U.S. Route 1-9 South	Newark	NJ	07114	Mr. Murp
Mr. Dennis Berry	Vice President-Customer Service	Mesa Airlines, Inc.	2325 E. 30th Street		Farmington	NM	87401	Mr. Berry
Mr. Robert Gould	President	MGM Grand Air, Inc.	1500 Rosencrans Ave.	Suite 350	Manhattan Beach	CA	90266	Mr. Goule
Mr. Ross Fischer	President	Miami Air International, Inc.	PO Box 660880		Miami Springs	FL	33266-0880	Mr. Fisch
Mr. John Selvaggio	President	Midway Airlines	300 W. Morgan St.		Durham	NC	27701	Mr. Selvaggic
Mr. Timothy E. Hoeksema	Chairman, President & CEO	Midwest Express Airlines, Inc.	6744 S. Howell Ave.		Oak Creek	WI	53154	Mr. Hoeksem
Mr. Daniel McKinnon	President	North American Airlines, Inc.	Building 75, JFK Int'l Airport	Suite 250	Jamaica	NY	11430	Mr. McKinno

Mr. Douglas M. Steenland	Sr V P, General Counsel, & Secretary	Northwest Airlines	5101 Northwest Drive		St. Paul	MN	55111-3034	Mr. Steenland
Mr. Clay Barnett	President	Presidential Air	17422 Pullman St.		Irvine	CA	92714	Mr. Barnes
Mr. Richard Reeve	President	Reeve Aleutian Airways, Inc.	4700 West International Airport Rd.		Anchorage	AK	99502	Mr. Reeve
Mr. Robert Redding	President	Reno Air, Inc.	PO Box 30059		Reno	NV	89520-3059	Mr. Redding
Mr. Larry Sullivan	President	Renown Aviation, Inc.	3940 Mitchell Road		Santa Maria	CA	93455	Mr. Sullivan
Mr. William Meenan	President	Rich International Airways, Inc.	5400 NW 36th St.		Miami	FL	33152	Mr. Meenan
Mr. Ron Ryan	President	Ryan International Airlines, Inc.	6810 W. Kellogg		Wichita	KS	67209	Mr. Ryan
Mr. Gregg Lukenbill	President	Sky King, Inc.	3600 Power Inn Rd., Suite H		Sacramento	CA	95826	Mr. Lukenbill
Mr. James Parker	Vice President and General Counsel	Southwest Airlines Co.	2702 Love Field Drive		Dallas	TX	75235	Mr. Parker
Mr. Robert P. Fleming	President & CEO	Sportsflight Airways, Inc.	2285 E. Elvira Rd.		Tucson	AZ	85706	Mr. Fleming
Mr. John Skiba	President	Sun Country Airlines, Inc.	7701 26th Ave. South		Minneapolis	MN	55450	Mr. Skiba
Mr. Tom Kolfenbach	President	Sun Jet International, Inc.	4700 140th Ave.	Suite 106	Clearwater	FL	34622	Mr. Kolfenbach
Mr. Morris Nachtomi	Chairman & CEO	Tower Air, Inc.	Hangar 17	JFK International Airport	Jamaica	NY	11430	Mr. Nachtomi
Mr. Lincoln Francis	President	Trans American Charter	5923 South Central Ave.		Chicago	IL	60638	Mr. Francis
Mr. Bill Mishk	VP-Marketing	Trans States Airlines	9275 Genaire Dr.		St. Louis	MO	63134	Mr. Mishk
Mr. Richard Magurno	Sr V P and General Counsel	Trans World Airlines, Inc.	One City Centre	515 North Sixth Street	St. Louis	MO	63101	Mr. Magurno
Mr. Stuart Oran	Exec V P-Corp Affs & General Counsel	United Airlines, Inc.	P.O. Box 66100		Chicago	IL	60666	Mr. Oran

Mr. Lawrence M. Nagin	Exec V P & General Counsel	USAir, Inc.	Crystal Park Four	2345 Crystal Drive	Arlington	VA	22227	Mr. Nagin
Mr. Lewis Jordan	President	ValuJet Airlines, Inc.	1800 Phoenix Blvd.	Suite 126	Atlanta	GA	30349	Mr. Jorda
Mr. Robert McAdoo	Chief Executive	Vanguard Airlines, Inc.	30 NW Rome Circle	Terminal B Mezzanine Level	Kansas City	MO	64153	Mr. McAdoo
Mr. George Travis	President	Viscount Air Service, Inc.	1000 E. Valencia Rd.		Tucson	AZ	85706	Mr. Travi
Mr. Larry Risley	Chief Executive Officer	Westair, Inc.	5570 Air Terminal Dr.		Fresno	CA	93727	Mr. Risley
Mr. Edward R. Beauvais	Chairman, President & CEO	Western Pacific Airlines, Inc.	2864 S. Circle Dr., Suite 1100		Colorado Springs	CO	80906	Mr. Beauvais
Mr. Charles W. Pollard	President	World Airways, Inc.	13873 Park Center Rd., Suite 400		Herndon	VA	22071	Mr. Pollard

[1] We do not object to reasonable choice of law provisions in contracts of carriage, such as those that designate the contract law of the state where the airline is headquartered as being applicable to airline-passenger contract disputes.